

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THOMAS WALKER)	
Claimant)	
VS.)	
)	Docket Nos. 228,916 & 233,282
UNITED PARCEL SERVICE)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Julie A. N. Sample on November 10, 1999.

APPEARANCES

Keith L. Mark of Mission, Kansas, appeared on behalf of claimant. Stephanie Warmund of Overland Park, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Respondent asks for review of the Administrative Law Judge's finding on the nature and extent of claimant's disability. The Administrative Law Judge relied upon the rating by the Court-appointed medical examiner to award a 16 percent disability to the right upper extremity in Docket No. 228,916 and a 5 percent disability to the left upper extremity in Docket No. 233,282. Respondent argues the weight of the evidence establishes there was no permanent disability to the left upper extremity.

Claimant asks for review of the decision to deny his request for pre-award interest under K.S.A. 44-512b(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and considering the arguments, the Appeals Board concludes the Award should be affirmed.

This is a functional impairment case. Separate awards have been given for each upper extremity. No general body or work disability is claimed.

The record contains ratings by three physicians, Dr. Lanny W. Harris, Dr. P. Brent Koprivica, and Dr. Edward J. Prostic. Dr. Harris rated the impairment on the right as 7 percent of the upper extremity and the impairment on the left as 0 percent. Dr. Koprivica rated the right as 20 percent and the left as 10 percent. Dr. Prostic, the court-appointed independent medical examiner, diagnosed a tear of the triangular fibrocartilage complex on the right and a chronic sprain of the wrist on the left. Dr. Prostic testified that neither condition is covered by the *AMA Guides to the Evaluation of Permanent Impairment*. Dr. Koprivica and Dr. Harris also indicated there was nothing specific in the *AMA Guides* for these conditions. Dr. Prostic rated the impairment on the right as 16 percent of the extremity and the impairment on the left as 5 percent of the extremity. The ALJ adopted the ratings by Dr. Prostic, the physician she appointed when the parties could not agree to the extent of functional impairment.

The Board agrees with and adopts the conclusion of the ALJ relating to nature and extent of claimant's disability. Although the rating given by the Court-appointed physician will not be the most accurate in all cases, he/she should be expected to provide an objective and balanced opinion. The opinion by Dr. Prostic does, in our view, most fairly reflect the extent of claimant's injury.

The Board also agrees with and, for reasons stated in the Award, affirms the decision to deny pre-award interest.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample on November 10, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Stephanie Warmund, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director